

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Yonkers Racing Corp. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1972 & 1973. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1981, he served the within notice of Decision by certified mail upon Yonkers Racing Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

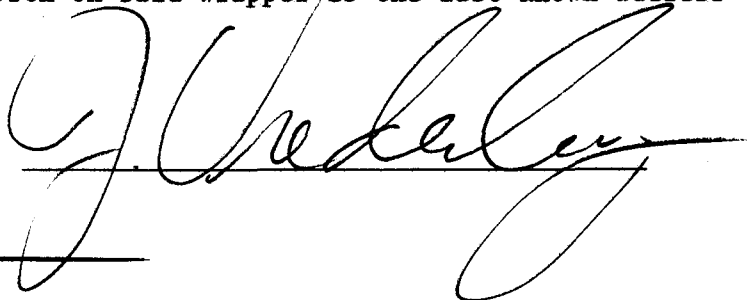
Yonkers Racing Corp.
Central Ave.
Yonkers, NY 10704

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
30th day of October, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Yonkers Racing Corp. :

AFFIDAVIT OF MAILING

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Franchise Tax under Article 9A of the Tax Law for :
the Years 1972 & 1973.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1981, he served the within notice of Decision by certified mail upon C. Van Leer Davis, III the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

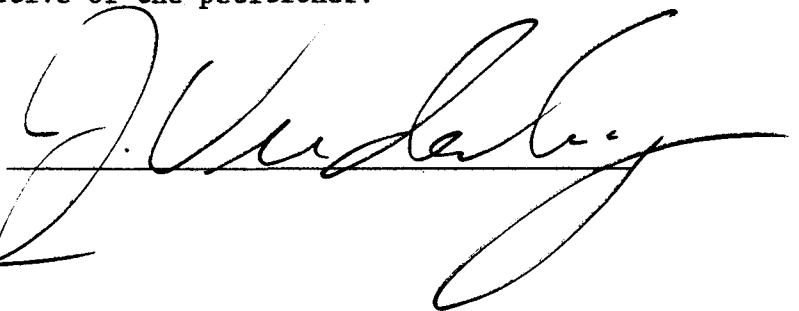
C. Van Leer Davis, III
Dechert, Price & Rhoads
3400 Centre Square W., 1500 Market Street
Philadelphia, PA 19120

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
30th day of October, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 30, 1981

Yonkers Racing Corp.
Central Ave.
Yonkers, NY 10704

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
C. Van Leer Davis, III
Dechert, Price & Rhoads
3400 Centre Square W., 1500 Market Street
Philadelphia, PA 19120
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
YONKERS RACING CORPORATION
for Redetermination of a Deficiency or for
Refund of Franchise Tax on Business
Corporations under Article 9-A of the Tax Law
for the Years 1972 and 1973.

DECISION

Yonkers Racing Corporation, Central Avenue, Yonkers, New York 10704, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1972 and 1973 (File No. 21158).

Petitioner filed a waiver of formal hearing and requested that this matter be decided by the State Tax Commission on the basis of stipulated facts, in accordance with a stipulation of facts dated September 27, 1979.

Based upon the aforesaid stipulation of facts, the State Tax Commission hereby renders the following decision.

ISSUE

Whether interest expense on debentures assumed by petitioner, Yonkers Racing Corporation, on June 15, 1972 and incurred in 1972 and 1973 constitutes interest indirectly attributable to subsidiary capital which could not reduce petitioner's New York State corporation franchise tax for the years in issue.

FINDINGS OF FACT

1. Yonkers Racing Corporation ("Yonkers") was incorporated under the laws of the State of New York on February 16, 1972 with its principal place of

business located in Yonkers, New York. Yonkers owns and operates a harness racing track known as Yonkers Raceway.

2. On June 15, 1972, Yonkers acquired all of the assets and assumed substantially all of the liabilities of Yonkers Raceway, Inc. ("Old Yonkers"), pursuant to an asset purchase agreement dated March 21, 1972. Pursuant to the agreement, consideration for the purchase was \$45,320,110.00 in cash plus assumption of the liabilities. The principal assets acquired and the principal liabilities assumed by Yonkers in the transaction were:

<u>ASSETS</u>		<u>LIABILITIES</u>	
Current Assets	\$ 7,264,555.00	Mortgage Payable	\$ 45,949.00
Land and Buildings	42,178,114.00	Income Taxes	976,280.00
Construction in Progress	7,536.00	6% Subordinated Debentures	5,214,900.00
Stock of Subsidiaries	6,472,166.00	Deferred Compensation	74,903.00
Machinery and Equipment	608,796.00	Contingent Liability to taxicab insurer	2,500,000.00
Furniture and Fixtures	265,266.00	Pension Liabilities	275,000.00
		Miscellaneous Liabilities	1,817,474.00
TOTAL	<u>\$56,796,433.00</u>	TOTAL	<u>\$10,904,406.00</u>

3. Among the assets acquired by petitioner from Old Yonkers was stock in three (3) wholly-owned subsidiaries with the following costs (basis to petitioner):

Ruanaidh Realty Corporation (formerly Dana Realty Corp.)	\$3,401,218.00
Terminal System, Inc. and related taxicab companies ("Terminal Systems Companies")	1,596,893.00
Lincoln Casualty Co.	<u>1,474,055.00</u>
TOTAL	<u>\$6,472,166.00</u>

The subsidiaries, supra, had been acquired by Old Yonkers in March, 1961.

4. Pursuant to a Stock Purchase Agreement dated June 15, 1972, Yonkers sold all the stock of the Terminal System Companies. Pursuant to an agreement dated August 3, 1972, Yonkers sold all the stock of Lincoln Casualty Co. Subsequent to these transactions and during the entire taxable year ending

December 31, 1973, Yonkers did not own the stock of any subsidiary other than Ruanaidh Realty Corporation.

5. Among the liabilities assumed by Yonkers from Old Yonkers were certain six percent (6%) twenty-year subordinated debentures (the "debentures"). The debentures were issued by Old Yonkers in January, 1964 and March, 1965 with the proceeds used by Old Yonkers to repurchase some of its outstanding common stock.

6. Yonkers deducted as an interest expense for franchise tax purposes the interest paid on the debentures in the amount of \$171,449.00 for the taxable year ending December 31, 1972 and \$278,972.00 for the taxable year ending December 31, 1973.

7. On February 17, 1976, the Audit Division issued a Notice of Deficiency (No. C750923020C) to Yonkers asserting additional franchise taxes for the year ending December 31, 1972 in the amount of \$3,447.00, plus interest. On September 3, 1976, the Audit Division issued a Notice of Deficiency (No. 750923021C) to Yonkers asserting additional franchise taxes for the year ending December 31, 1973 in the amount of \$9,158.00 plus interest. Yonkers timely filed petitions for redetermination of the aforesaid notices of deficiency. The original notices of deficiency result from the addition, to Yonkers' entire net income, of interest expense indirectly attributable to subsidiary capital, based on section 208.9(b)(6) of the Tax Law. In its Answer, the Department of Taxation and Finance asserted additional deficiencies for the years in issue. Certain of the issues were settled by stipulation dated September 27, 1979. The only issue remaining between the parties concerns the tax treatment of interest paid by Yonkers on subordinated debentures issued by Old Yonkers.

CONCLUSIONS OF LAW

A. That section 208.9(b)(6) of the Tax Law provides that entire net income of the corporate taxpayer shall be determined without the deduction or exclusion of:

"in the discretion of the tax commission, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital."

This disallowance prevents the taxpayer from reaping a double benefit, since section 209.9(a)(1) allows the corporation to exclude income from subsidiary capital.

B. That subdivision 4 of section 208 furnishes the definition of subsidiary capital:

"The term 'subsidiary capital' means investments in the stock of subsidiaries and any indebtedness from subsidiaries, exclusive of accounts receivable acquired in the ordinary course of trade or business for services rendered or for sales of property held primarily for sale to customers, whether or not evidenced by written instrument, on which interest is not claimed and deducted by the subsidiary for purposes of taxation under articles nine-a, nine-b, nine-c..."

C. That the cash payment made by petitioner at the time of the acquisition of assets, including the subsidiaries, did not equal the full value of the assets acquired. Petitioner assumed the liabilities of Old Yonkers, thereby effectively "borrowing" to meet the full price of the assets acquired. Consequently, a proportionate part of the interest expenses on petitioner's borrowings, specifically the subordinated debentures, is indirectly attributable to subsidiary capital, in the proportion that petitioner's investments in and advances to subsidiaries bear to petitioner's total assets. See, e.g., Matter of Supply Resources, Inc., State Tax Commission, May 1, 1981; Matter of World Wide Volkswagen Corp., State Tax Commission, April 30, 1974; Matter of Chock Full O' Nuts Corp., State Tax Commission, August 11, 1971.

D. That the petition of Yonkers Racing Corporation is hereby denied; that the notices of deficiency issued February 17, 1976 and September 3, 1976 are modified in accordance with the stipulation executed by the parties; and that except as so agreed and modified, the deficiencies are in all other respects sustained.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER